

Appl. No. : 09/991,445
Filed : November 16, 2001

burdensome to search or examine. Regardless of whether a patent application claims inventions that are "independent" or "distinct", a restriction requirement should not be made if a search and examination of the entire patent can be made without serious burden:

If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions.

MPEP 803

Regarding the election of species and the requirement that the applicant chooses one autoimmune disease, the Examiner states that the term "autoimmune disease" would be a "sub-genus claim, not a species disease." However, there is no authority that applicant's attorney is aware of that makes distinctions for the purpose of restriction between genus, sub-genus and species claims. Thus whether "autoimmune disease" is a "sub-genus" or "species" of "disease" is a matter of opinion and no basis exists for labeling it a "sub-genus claim". Further, the MPEP clearly states that an applicant is permitted to a reasonable number of species. There are a limited number of autoimmune disorders embraced by the term "disease". This is not an example where the genus embraces hundreds or thousands of species. Thus, as required by MPEP 803.01, there would be no serious burden on the Examiner to allow all autoimmune diseases in one claim for purposes of examination.

Applicant respectfully requests reconsideration of the restriction requirement between Groups I and II and the election of species required in group II. Applicant also hereby requests a three month extension of time. Applicant's attorney can be reached at the telephone number stated below if there are any questions.

Dated: 3/29/04

Respectfully submitted,

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